IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

WP(C).No. 8237 of 2005(E)

PETITIONER:

M.PONNACHAN, SUPERINTENDENT,
ACCOUNT CLOSING UNIT, VAZHATHOPE,
IDUKKI DISTRICT.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR

RESPONDENTS:

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1. THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVANAM,
THIRUVANANTHAPURAM.

2. THE CHIEF ENGINEER (HRM),
K.S.E.BOARD, PATTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.P.SANTHALINGAM, SC, KSEB
SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON 10/10/2007 DELIVERED THE FOLLOWING:

WP(C) No. 8237/2005

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE ORDER DATED 30/07/2004 OF THE 2ND RESPONDENT PROMOTING 195 PERSONS AS SENIOR SUPERINTENDENT.

P2 : COPY OF the REPRESETNATION, DATED 02/10/2004 GIVEN BY THIS PETITIONER TO THE 1ST RESPONDENT.

P3 : COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 17/12/2004.

P4 : COPY OF THE REPRESENTATION DATED 24/01/2005 ADDRESSED TO THE 2ND RESPONDENT.

P5 : COPY OF THE ORDER NO. GRC/3/8013/79 DATED 31/05/1983 OF THE CHIEF ENGINEER.

P6 : COPY OF THE ORDER NO. E-BEW/1/74/E4-86 DATED 20/10/1986 OF THE CHIEF ENGINEER.

P7 : COPY OF the ORDER NO. ERI-EW/87/506 DATED 07/05/1987 OF THE EXECUTIVE ENGINEER, ELECTRICAL DIVISION, KOTTARAKKARA.

P8 : COPY OF THE PROCEEDINGS OF THE CHIEF ENGINEER (ELECTRICITY GENERAL) DATED 07/01/1997.

P9 : COPY OF THE ORDER B.O.(E.B.) NO. 137/2006 DATED 17/01/2006.

// TRUE COPY //

PA TO JUDGE.

jg

V.GIRI, J.

WP(C) No. 8237 of 2005

Dated, this the 10th day of October, 2007

J U D G M E N T

The petitioner joined the Kerala State Electricity Board as a part time contingent worker on 03/06/1983. While so, he was absorbed as a electricity worker / mazdoor with effect from 22/10/1986. Apparently, by the time, the petitioner had acquired literacy and cycling in his three years service as part time contingent sweeper and he was aged below 38 years in 1986. Vide order dated 07/05/1987, the petitioner's probation to the category of mazdoor was declared. Thereafter, he was promoted as a Junior Assistant / Cashier on 23/03/1991 and as a Senior Assistant on 12/09/1991.

2. On 30/07/2004, Ext.P1 order was issued by the 2nd respondent promoting 195 persons to the post of Senior Superintendent. In this list, petitioner is included as serial No. 125. But in the case of the petitioner, Ext.P1 list noted that the petitioner's promotion orders have been withheld. The petitioner has filed his objection vide Ext.P2 representation. On 17/12/2004, Ext.P3 was issued by the 2nd respondent promoting another 92

persons junior to the petitioner as Senior Superintendents. It is at this point of time, the petitioner approached this Court, seeking direction to promote him as Senior Superintendent with retrospective effect as ordered in Ext.P1.

3. Vide interim order dated 28/05/2005, the Board was directed to pass orders promoting the petitioner to the post of Senior Superintendent on a provisional basis. This was challenged by the Board in W.A.No. 984/2005. The appeal was allowed on the premise that the provisional promotion is not necessary as the petitioner's claim should be considered in the writ petition.

4. In the counter affidavit filed by the Board, it is contended that the petitioner's service as a part time contingent sweeper was not regularized nevertheless he was absorbed as a Mazdoor with effect from 22/10/1986. It is conceded that the petitioner was qualified to be absorbed as a Mazdoor. Thereafter, under Ext.P7, the petitioner's probation was also declared in the category of Mazdoor. The petitioner was thereafter promoted as a Junior Assistant / Cashier and then as a Senior Assistant on the dates mentioned above.

5. According to the Board, when the question of promotion

of the petitioner as a Senior Superintendent came up, the Board realized that the petitioner's service as a part time contingent sweeper was not regularized. Reference in this regard is made to a circular issued by the Board on 31/10/1981, which inter alia provides the norms and procedures to be followed in the matter of appointment of part time contingent sweepers. Apparently, direction for regularization was given in relation to those candidates, who were engaged in HR/Contract basis as on 31/10/1981. Other categories are also mentioned in paragraph 4 of the counter.

6. Reference is also made to the directions issued, by this Court in 1990 and thereafter, to all the part time contingent staff recruited subsequent to 1981, enabling such persons to file representations before the Board for regularization of such services.

7. As a matter of fact, the petitioner was admittedly absorbed as a Mazdoor with effect from 22/10/1986. This was not on the basis of any directions issued by this Court. There is also no dispute in this writ petition that the petitioner was qualified to be absorbed as a Mazdoor in 1987. In my view, the stand taken by the Board that the petitioner's services as the part time contingent

sweeper was not regularized prior to his regularization as such, cannot be considered as a matter of consequence at this stage. It is especially so because petitioner was actually absorbed as a Mazdoor with effect from 22/10/1986 and he was qualified to be appointed as a Mazdoor even according to the Board. Significantly under Ext.P7, his probation was declared. He was, thereafter, promoted as a Junior Assistant / Cashier and as a Senior Assistant. He was considered as eligible for promotion to the post of Senior Superintendent. In my view, the Board is not entitled to deny such promotion to the petitioner and was not entitled to withhold the same in Ext.P1 order, merely because petitioner's service was not regularized as a part time contingent sweeper prior to 1986. It is true that going by the circular dated 31/10/1981 referred to in paragraph 4 of the counter affidavit, only such workers who are engaged in HR/Contract basis as on 31/10/1981 were entitled to be regularized. Petitioner had joined service as a part time contingent sweeper only with effect from 03/06/1983 and the Board having absorbed the petitioner as a Mazdoor in 1986 and having declared his probation to the category of Mazdoor as per Ext.P7 order, there is no meaning in withholding the promotion due to the

petitioner as a Senior Superintendent, which otherwise was considered to be due to him as on the date of Ext.P1.

7. I am therefore of the view that the petitioner must be given promotion to the post of Senior Superintendent as on the date of Ext.P1 by assigning him the seniority as assigned in Ext.P1. The learned counsel for the petitioner submits that the petitioner is also to be given monetory benefits with reference to the date of Ext.P1, consequent upon such promotion. I am of the view that the petitioner would be entitled to be considered as having been promoted with reference to the date mentioned in Ext.P1 and assignment of seniority as done in Ext.P1. Petitioner's scale of pay may also be fixed by treating him as having been promoted as per Ext.P1 order. But the petitioner would not be entitled to any arrears of pay on the basis of such promotion with reference to the date of Ext.P1 till he actually functioned as a senior superintendent.

8. This writ petition is therefore disposed of directing the 2nd respondent to pass orders promoting the petitioner as a senior superintendent with effect from the date of Ext.P1 and assign his seniority in the category of senior superintendent accordingly. Petitioner's scale of pay shall be fixed in the category of senior

superintendent consequent on his promotion with effect from the date of Ext.P1. The petitioner shall be entitled to draw wages in the category of senior superintendent with effect from the date on which he actually starts functioning as a Senior Superintendent. The petitioner shall not be entitled to any arrears of salary in the category of Senior Superintendent from the date of Ext.P1 till the date when he actually starts functioning as a Senior Superintendent. I am inclined to issue this direction essentially because the Board cannot be considered as being completely unjustified in taking up the stand that the petitioner's service as a part time contingent sweeper was not actually regularized at any point of time and it is therefore that it was withholding the promotion to him in the category of Senior Superintendent, having become aware of the lacuna in the absorption of the petitioner in the category of Mazdoor.

9. The 2nd respondent shall pass orders as directed above within a period of one month from the date of receipt of a copy of this judgment.

There will be no orders as to costs.

(V.GIRI, JUDGE.)

jg